

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-6020

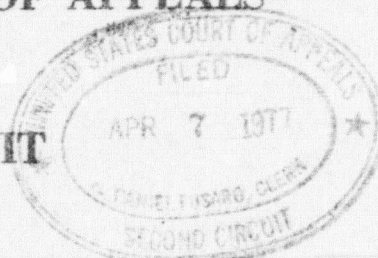
ORIGINAL
WITH PROOF
OF SERVICE

To Be Argued By
DONALD M. KLEIN

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT



ROBERT WILLIAM ALTIMUS,

Plaintiff-Appellant,

-against-

MANHOOD FOUNDATION, INC., ROBERT ROBINSON, SOCIETY OF ST. VINCENT de PAUL, JOSEPH M. FITZPATRICK, VIRGINIA RUSSELL, H. F. J. CONSTRUCTION COMPANY, HAROLD M. STEWART, ELLIOT RICHARDSON, Personally and in his capacity as Attorney-General of the United States, MAURICE H. SIGLER, Personally and in his capacity as Chairman of the United States Board of Parole, GERALD E. MURCH, WILLIAM T. WOODWARD, JR., GEORGE J. REED, WILLIAM E. AMOS, PAULA A. TENNANT, CURTIS C. CRAWFORD, Personally and in their capacities as members of the United States Board of Parole, NORMAN A. CARLSON, Personally, and in his capacity as the Director of the United States Bureau of Prisons, RALPH L. AARON, Personally and in his capacity as the Warden of the Federal Correctional Institution at Sandstone, Minnesota,

Defendants-Appellees.

Appeal From the U.S. District Court For The
Southern District of New York

BRIEF FOR APPELLEES MANHOOD FOUNDATION, INC.
AND ROBERT ROBINSON

Dated: New York, N. Y.
April 5, 1977

PIERCE PALEY, P. C.
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(6247)

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Table of Authorities

Counsel for Appellees Manhood Foundation, Inc. and Robert Robinson is not citing any authority and is relying entirely upon the decision and order of the District Court, Lasker, D.J., Appellants Appendix (Pgs. A1 - A18).

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT WILLIAM ALTIMUS,

Plaintiff-Appellant,

-against-

MANHOOD FOUNDATION, INC., et al. ("Private Defendants")
and Elliot Richardson, et al. ("Federal Defendants"),

Defendants-Appellees.

(Docket No. 77 - 6020)

BRIEF FOR APPELLEES
MANHOOD FOUNDATION, INC.
AND ROBERT ROBINSON

PRELIMINARY STATEMENT

Appellees Manhood Foundation, Inc. ("Manhood") and Robert Robinson ("Robinson") will proceed in the within appeal solely upon the issues directly relating to them. Said Appellees have taken no position vis-a-vis the disputes and issues as raised between the appellant and the numerous "federal defendants".

The aforesaid appellees shall show that the portion of the Memorandum and Order of the District Court, S.D.N.Y.,

dated December 21, 1976 (Appellant's Appendix 1 - 18) dismissing the complaint against Manhood and Robinson was correct in all respects and should be affirmed.

STATEMENT OF ISSUE PRESENTED
FOR REVIEW

1. Did the District Court err in dismissing the Appellant-Plaintiff's claims against Manhood Foundation, Inc. and Robert Robinson?

STATEMENT OF THE CASE

In his brief the Appellant states that "All material facts in this appeal are uncontested." The facts relating to Manhood and Robinson are contained in the affidavit of Robert Robinson, sworn to on October 16, 1973 (Document #15 on appeal) and are as set forth below.

Manhood Foundation, Inc. is a Not-for-Profit Corporation organized by virtue of the laws of the State of New York, operating within the City of New York. Manhood's activities are dedicated to the rehabilitation of law offenders, it is staffed primarily by ex-offenders and it has a Board of

Trustees composed of law makers, law enforcers, ex-law offenders and concerned citizens. Manhood's activities include post-release counselling, job and training placement services and supportive follow-up services.

Robert Robinson, himself an ex-offender, was employed by Manhood as a counsellor. As part of his job and as part of the functioning of Manhood Foundation, Inc., Robinson was contacted by the Archdiocesan Central Council of New York, Society of St. Vincent de Paul, a co-appellee-defendant herein, and was asked if he could be of assistance to the appellant who was then incarcerated and seeking to arrange for a parole plan. Mr. Robinson agreed to help the appellant and he contacted Harold M. Stewart, president of H.F.J. Construction Company, defendants herein who have apparently defaulted, to request that said company offer the appellant employment. Mr. Stewart agreed and filled in the required "Statement of Employer" form which was returned to the Parole Board. In addition, Mr. Robinson agreed to act as the appellant's parole advisor and so stated in the requisite forms sent by him to the Parole Board.

As stated in the Appellant's brief, at P. 5, the forms sent in by Stewart and Robinson were "confirmed as accurate by Vern Erickson, Mr. Altimus' caseworker at Sandstone".

The appellant then filed his formal application for parole release and was subsequently denied parole. No reasons were ever given for that denial and it is undisputed that no reasons whatsoever for said denial are contained in the appellant's parole board file. (P. 12 of Appellant's affidavit; Paragraph 8 of Document 27 on appeal).

ARGUMENT

THE APPELLANT FAILS TO STATE A CLAIM AGAINST MANHOOD AND ROBINSON

The District Court, in its Memorandum and Order dated December 21, 1976 (Document 37 on Appeal, pp. A1-A19 of Appellant's Appendix) thoroughly discusses the purported claims asserted against the private defendant-appellees, including Manhood and Robinson and it is shown that there is absolutely no basis upon which to allow the appellant to proceed against the private defendants. The appellant has not, and cannot, show on appeal that the District Court's findings, reasonings and conclusions are incorrect or should be reversed for any reason.

The brief of the appellant, which must be assumed to contain the appellant's most convincing arguments and

substantiation for reversal, is nothing more than a series of unwarranted assumptions and inferences. No basis, in fact or law, has been presented upon which the District Court's decision and order may be questioned.

The best that the appellant may do is to conjure up a series of inferences and beliefs -- none of which have been or can be substantiated. The appellant states in his brief, the following:

1. The appellant fashioned "a new parole release plan in hopes of overcoming as yet unknown defects his first plan may have had". (P. 7 of appellant's brief)
2. "The appellant believed that the Private Defendants must have assembled a deficient parole plan". (P. 8)
3. "There were, as the District Court found, no reasons whatsoever in the file explaining the Parole Denial" (P. 12). It should be noted that counsel for the private defendants have never been permitted to see any portion of the appellant's parole file.

4. "In fact, there is no evidence that the Board of Parole even considered the file.... What was Mr. Altimus to infer?" (P. 12)
5. "The inferences confronting Mr. Altimus were legion....Perhaps the Board members saw deficiencies in the Parole Plan..." (P. 13)
6. "Only two facts are clear from the file:
(1) No reasons were ever recorded to explain or justify the Board's action...
(P. 13)
7. "The District Court below found that the Federal Board of Parole never recorded the reasons for denying parole release to Mr. Altimus (A1-A2;A4) nor ever informed him of any reasons for parole denial (A3)". (P.19)
8. "Why the Board acted so is open to speculation". (P.20)
9. "There is not a shred of evidence in the record to show that the Board of Parole members could have had reasonable grounds to act as they did." (P. 23)

The Appellant attempts to justify the maintenance of this suit against Manhood and Robinson based upon inference, as set forth on P. 34 of his brief. As may be clearly seen, there is no claim which may be asserted based upon those illogical and unsupported "inferences".

Robinson offered to act as the Appellant's parole advisor and filled out the appropriate forms to do so. Robinson contacted a prospective employer, H.F.J. Construction Company, to attempt to obtain the appellant employment and an offer of employment was made. If the prospective employer did not properly complete a form for submission, what has that to do with Robinson and Manhood? Robinson and Manhood did all they could on behalf of the Appellant, as a result of which they have been rewarded by a suit against them which has been pending for several years. This suit, which contains an unfounded claim that Manhood and its employee, Robinson, were doing the direct opposite of what Manhood is in existence to do. This suit seems to allege that Manhood acted to the detriment of a convict when, in fact, Manhood is dedicated to and functions solely to assist in the rehabilitation of ex-offenders.

The District Court afforded the Appellant extremely wide latitude and opportunity to obtain substantiation of

the purported claims asserted against Manhood and Robinson. No such substantiation has been forthcoming and none is even in existence. There were no acts committed by Manhood or Robinson which would give rise to any claim on the Appellant's behalf. The District Court correctly dismissed the claims against Manhood and Robinson. That determination should be affirmed.

CONCLUSION

The District Court, dismissing the claims against Manhood and Robinson should be affirmed.

Dated: April 5, 1977

Respectfully submitted,

PIERCE PALEY, P.C.
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DONALD M. KLEIN
of Counsel

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

Henry KAPLAN, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 44-10 Ketcham St.
Elmhurst, N.Y.

That on the 7 day of April, 1977,
deponent personally served the within BRIEF FOR APPELLEES MANHOOD
FOUNDATION, INC. AND ROBERT ROBINSON

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 2 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed~~
~~in a postpaid properly addressed wrapper, in the post office~~
~~or official depository under the exclusive care and custody~~
~~of the United States post office department within the State~~
~~of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

GAREY & GAREY
Attorneys for Defendants-Appellees,
Society of St. Vincent de Paul,
Joseph M. Fitzpatrick and
Virginia Russell
342 Madison Ave.
New York, N. Y. 10017

Henry Kaplan

Sworn to before me this

7th day of APRIL, 1977

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930903
Qualified in Queens County
Commission Expires March 30, 1979

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930903
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

Henry KAPLAN, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 14-10 Ketcham ST
ELMHURST, N.Y.

That on the 7 day of April, 1977,
deponent personally served the within BRIEF FOR APPELLEES MANHOOD
FOUNDATION INC. AND ROBERT ROBINSON

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or official depository under the ~~exclusive care~~ and custody
of the United States ~~post~~ office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

NICHOLAS A. ROBINSON, ESQ.
BRATTER, GREENE, ALLISON & TUCKER
Attorney for Robert William Altimus, Plaintiff-Appellant
430 Park Ave.
New York, N. Y. 10022

Henry Kaplan

Sworn to before me this

7th day of APRIL, 19 77.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

Kenneth E. Kennedy, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 1171 Sterling Pl
BKlyn NY 11213.

That on the 7 day of April, 1977,
deponent personally served the within BRIEF FOR APPELLEES
MANHOOD FOUNDATION, INC. AND ROBERT ROBINSON
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 2 true copies of same with a duly
authorized person at their designated office.

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or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

ROBERT B FISKE JR. ESQ.
U.S. ATTORNEY FOR THE SOUTHERN DISTRICT
OF NEW YORK - ATTORNEY FOR
DEFENDANT APPELLEE
ONE ST. ANDREWS PLAZA
NEW YORK, N.Y.

Sworn to before me this

7th day of April, 1977
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

Kenneth E. Kennedy